U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34612506

Date: NOV. 6, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an art restorer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that: (1) the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required; (2) she would continue working in her field of expertise in the United States, and (2) her entry will substantially benefit prospectively the United States. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including

items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner studied art restoration in Russia, earning certification as an art restorer, qualified to conserve and restore artworks from the 16th century and later. The Petitioner worked at the [redacted] Russia, as leader of the restoration department from 1981 to 2006 and as deputy director for scientific research from 2006 to 2020. She has been in the United States since she entered as a B-2 nonimmigrant visitor in May 2022.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met only the first criterion, relating to prizes or awards. On appeal, the Petitioner asserts that she has satisfied all eight claimed criteria.

Before we discuss the individual criteria, we note the Director's assertion that qualifying evidence must have existed at the time of filing. We agree that a petitioner must meet all eligibility requirements at the time of filing, as required by 8 C.F.R. § 103.2(b)(1). But the same regulation also requires that the petitioner must continue to meet those requirements throughout the adjudication of the petition. As such, evidence that originated after the filing date cannot establish eligibility at the time of filing, but could be relevant to establishing continued eligibility after the filing date.

Also, we agree with the Petitioner that much of the evidence that the Director declined to consider, submitted in response to a request for evidence (RFE), actually dates from before the filing date, even if it was not yet in the record at the time of filing.

Upon review of the record, we conclude that the Petitioner has satisfied at least three other criteria, as discussed below.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner documented her membership on two "Expert Councils" of the Ministry of Culture of the Republic of Karelia. In response to the RFE, the Petitioner submitted meeting minutes showing she participated in "[c]onsideration of candidates for awards from the Government of the Republic of Karelia to members of creative unions . . . and personal awards . . . for gifted students and graduate students."

In the denial decision, the Director repeated the assertion that "the evidence does not show the petitioner actually reviewed any work or otherwise acted as a judge of the work of others." The Director acknowledged the Petitioner's submission of unspecified evidence in response to the RFE, but stated that "[t]he evidence must have been in existence as of the date the petition was filed." As the Petitioner notes on appeal, the meeting minutes all date from 2016-2020, several years before the petition's May 2023 filing date.

The Petitioner has established by a preponderance of the evidence that she meets the requirements of the criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

A scholarly article should be written for learned persons in that field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. Scholarly articles include published conference presentations at nationally or internationally recognized conferences. *Id.*

In the denial notice, the Director acknowledged only one of the Petitioner's articles, which the Director determined does not qualify as scholarly because "[i]t appears that the [intended] audience may be the general public."

We agree with the Petitioner's assertion on appeal that the Director "erred by disregarding [the] other five (5) research articles authored by [the Petitioner]." Some of the Petitioner's published works appear to be from academic conferences, at least some of which were national rather than local or regional.

The Director did not address these materials or explain why they do not satisfy the requirements of the criterion. We therefore withdraw this determination by the Director.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner has restored numerous art works that went on to be displayed, usually at [redacted] The Director concluded: "The evidence does not establish that she created or developed the paintings because the petitioner restored the artwork and did not create them."

We agree with the general principle that, when a painting is displayed, it is the work of the artist that is on display. But the record provides an important distinction. The Petitioner's initial filing included evidence about a 2005 exhibition at [redacted] with a title variously translated as [redacted] or [redacted] A 2005 article from the Russian online publication *Museums of Russia* described this exhibition as being "dedicated to the work of restorers," specifically the Petitioner and a colleague at [redacted] The record indicates that this exhibition focused on examples of restoration work, rather than paintings themselves.

This 2005 exhibition appears to be sufficient to establish the display of the Petitioner's work at an artistic exhibition.

Because the above discussion shows that the Petitioner has satisfied at least three of the criteria at 8 C.F.R. § 204.5(h)(3), we need not discuss the other claimed criteria, and therefore reserve discussion on them. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

B. Final Merits Determination

As discussed above, we conclude that the Petitioner submitted the required initial evidence. The next step is to determine whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim; that she is one of the small percentage at the very top of the field of endeavor; and that her achievements have been recognized in the field through extensive documentation. A final merits determination involves analyzing an individual's accomplishments and weighing the totality of the evidence to determine if their successes are sufficient to demonstrate extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20, and *see generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

We will remand the matter in order for the Director to make a final merits determination.

In doing so, the Director must bear in mind that the determination involves consideration of the totality of the record, rather than simply re-evaluating the evidence submitted under each of the ten underlying criteria. The Director must determine whether the record as a whole shows that the Petitioner has achieved sustained national or international acclaim.

Of particular concern in this case, the Director must consider the extent to which the Petitioner has achieved recognition at a national or international level. Evidence focusing on the Republic of Karelia may not be sufficient in this regard, because the Republic of Karelia is a political subdivision of the Russian Federation, rather than an independent nation in its own right. Therefore, recognition in the Republic of Karelia is not necessarily national or international acclaim.

The Director also concluded that the Petitioner had not shown that she "is coming to the United States to continue work in the area of expertise" as required by section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5), and that her "entry will substantially benefit prospectively the United States" as required by section 203(b)(1)(A)(iii) of the Act. We will remand the matter because the Director did not adequately explain the basis for these conclusions.

The regulation at 8 C.F.R. § 204.5(h)(5) states that a petitioner can establish their intention to continue in the area of expertise by submitting "a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The Petitioner submitted such a statement with the petition, expressing an intention to restore icons for Orthodox churches; consult on conservation, restoration, and authentication of tempera paintings; and create a college-level course on art restoration. The Director did not explain why these plans were not specific enough. Also, the Director did not address materials that the Petitioner submitted regarding the nature and purpose of art restoration, which may illuminate the question of how her work would benefit the United States.

The Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). Here, the Director has not met this requirement with respect to the Petitioner's intention to continue working in the area of expertise and prospective benefit to the United States. The Director must further consider these issues, and the arguments that the Petitioner made on appeal regarding them. If the Director again concludes that the Petitioner has not met these requirements, then the Director must more fully explain the reasons for that conclusion.

III. CONCLUSION

We will remand the matter to the Director for a final merits determination, with particular attention to the issue of national or international rather than regional acclaim, and for further consideration of the issues of the Petitioner's plans to continue working in her area of expertise and prospective benefit to the United States.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.